

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 248 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAIJIBHAI ABHABHAI TALPADA

Versus

POLICE INSPECTOR

Appearance:

MR RR VAKIL for Petitioner
UNSERVED AS REFUSED for Respondent No. 1
SERVED BY DS for Respondent No. 2
Mr MA Bukhari, APP for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 14/03/97

ORAL JUDGEMENT

Rule.

Learned APP Mr M A Bukhari waives service of Rule on behalf of respondent No.3.

By way of this Special Criminal Application under Article 226 of the Constitution of India, the petitioner seeks direction for transfer of investigation of Criminal Case No.0006/97 of Anand (Rural), Kheda Police Station to any other independent investigating agency. It is alleged that deceased Hirabhai Abhabhai Talpada was kidnapped by the police personnel on December 29, 1996 and on the next day pieces of the dead body were found from the nearby agricultural field. An information of the incident was initially not accepted by the Anand (Rural) police station. However, the same was accepted on 2.1.1997 on the intervention of the District Superintendent of Kheda. It is not necessary to state the facts in details as set out in the writ petition. Suffice it to say that the say of the family of the deceased is that he was murdered by none else but the police officers of the police station, Anand (Rural).

2. Mr R M Parmar, Sub-Divisional Police Officer, Anand Division, District Kheda (South) has filed detailed affidavit and denied all the allegations. It is also pointed out that the petition has been filed malafidely with a view to put pressure on the police.

3. Learned APP, Mr M A Bukhari submitted that the investigation has been conducted by Sub-Divisional Police Officer, Anand, a superior officer, and therefore, the investigation has been conducted by an independent investigating agency.

4. Having considered the rival contentions of the parties, I am of the view that when there is a specific allegation against the officers of the particular police station, not of malafide investigation but charges of their involvement in the actual crime, it is expedient that such cases are investigated by an independent Investigating Agency. In a judgment delivered on 21.1.1997 in Special Criminal Application No.101/96 in the case of Dharmishtaben Zala vs. State of Gujarat, this Court has taken a view that in a case of custodial death, the investigation should be conducted with promptitude by an independent agency so that all concerned including the relatives may feel assured that an independent agency is looking into the matter without influence of the local police. This Court further observed that -

"However, faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. If the higher police authority does not

act promptly, it may form a reasonable ground for the members of the family of the victim to suspect a foul play therein and this may be a ground for the Courts to consider for transfer of the investigation to an independent investigating agency."

It is true that the said case was of custodial death. However, the ratio applies to the present case also, inasmuch as that the allegation is that the deceased was kidnapped by the police and subsequently it was found that he was murdered. In view of the aforesaid, this Special Criminal Application is allowed and it is directed that the investigation of C.R. No.0006/97 registered at police station, Anand (Rural) will be entrusted to the State C.I.D. Crime Branch, Ahmedabad. It is made clear that this order will have no reflection on the credibility of the officers of the police station at Anand (Rural) or any other police officers of District Kheda. I am only guided by larger requirement of justice.

Rule made absolute to the aforesaid extent.

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msh.